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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

22 ELM RYE, INC.,

Debtor.

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Chapter 11

Case No.:22-22544 (SHL)

DEBTOR'S DECLARATION PURSUANT TO LOCAL BANKRUPTCY RULE 1007-2

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

I, Alan Schoening, declare as follows:

1. I am the President of 22 Elm Rye, Inc. (the “**Debtor**”), which operates a restaurant located at 22 Elm Street, Rye, NY, that serves Mediterranean cuisine in the upscale town of Rye, New York (the “**Restaurant**”). The Debtor was formed on July 21, 2020, for the purpose of entering into a lease and operating the Restaurant. The majority of its stock is owned by B Conscious LLC which is the manager of a limited liability company (“**Meso Delray, LLC**”) that operates a restaurant located in Delray, Florida. Meso Delray has also filed for chapter 11 bankruptcy in the White Plains division of the Southern District of New York. The main financing for Debtor of \$1,000,000 (the “**Secured Loan**”) was obtained from FVP Servicing LLC, as administrative agent for the lenders (“**Secured**

Lender” or **Secured Creditor**”) in the form of a loan to Debtor and Meso Delray (as co-debtors), guaranteed by B Conscious and Alan Schoening.

2. I submit this Declaration in accordance with Local Bankruptcy Rule 1007-2, on behalf of the Debtor in connection with its Petition, exhibits and schedules, for the purpose of apprising the Court and parties in interest of the circumstances that compelled the commencement of this chapter 11 case and in support of (i) Debtor’s chapter 11 petition filed August 16, 2022 (the **Petition**”), and (ii) the motions and applications that the Debtor has filed with the Court.
3. The Debtor has not previously filed a Chapter 11 Petition.
4. I have reviewed the Debtor's Petition, schedules, exhibits and all documents filed in connection therewith, including the First Day Motions, and I am familiar with the facts alleged and any relief requested therein.
5. All facts set forth in this Declaration are based upon my:(i) personal knowledge; (ii) review of relevant documents; and (iii) opinion based upon my experience and knowledge with respect to the Debtor's operations and financial condition. All financial information submitted with this Declaration is on an estimated and unaudited basis, unless otherwise indicated.

BACKGROUND OF THE DEBTOR AND ITS BUSINESS

a. Debtor's business and circumstances leading to the Debtor's filing. LR 1007-2(a)(1)

6. The Debtor was formed as a New York Corporation on July 21, 2020, for the purpose of acquiring a lease and owning and operating the Restaurant. The Debtor offers Mediterranean cuisine for its customers in its 5,100 square foot, upscale location in Rye,

New York. The Debtor's website provides additional information: [Meso Rye — Meso Mediterranean Cuisine \(mesorestaurants.com\)](http://mesorestaurants.com).

7. The Debtor has approximately 22 employees and uses ADP for payroll (the "**Payroll Company**"). There are two managers who are paid as independent contractors, Dane Asermely and Kristina Lee.
8. Debtor acquired its lease from Elm Place Management LLC ("**Landlord**") on July 28, 2020, with the lease term commencing on June 1, 2020, for a period of ten years, with the rent increasing each year. The base rent is currently \$18,000 with additional rent of \$1,600 for the outdoor seating area and \$3,935.70 for the additional rent for taxes, insurance and maintenance for a total of \$23,535.70. Approximately \$150,000 is owed in back rent which Debtor expects to be able to pay and therefore cure the lease.
9. The Debtor provided a \$50,000 security deposit to Landlord, which to date is unapplied.
10. Debtor is jointly liable on the Secured Loan as set forth above; however, that loan is expected to be paid on or about September 15, 2022.
11. The Debtor owes sale tax to New York State Department of Tax and Finance ("**DTF**"); but intends to stay current on all taxes post-petition, including sales tax.
12. The owners and employees of Global Resource Advisors, LLC ("**GRA**") recently began to assist in the management of the business affairs of the Debtor in conjunction with Alan Schoening, the President of the Debtor. Alan Schoening and Christopher D. Myers will manage the financial operations of the Debtor with Christopher D. Myers being the acting CFO of the Debtor. James Burchetta, Esq. is the acting general counsel of Debtor.
13. The main reason for Debtor's current financial difficulties stems from (1) flood damage; and (2) lack of financial controls which the Debtor has now taken steps to fix.

DEBTOR'S DEBT, CAPITAL STRUCTURE AND MANAGEMENT

14. Debtor is the co-borrower on a \$1,000,000.00 loan (the “**Secured Loan**”) taken out on September 21, 2021, for which FVP Servicing, LLC, is the administrator for the lenders (“**Senior Lender**” or “**FVP**”). The proceeds of the Secured Loan were utilized by Meso Delray, LLC (the co-obligor) and will be repaid by Meso Delray LLC upon the expected closing on the sale of all its assets to occur on or about September 15, 2022.
15. Debtor has approximately \$1,635,000 of priority and nonpriority unsecured debt. Debtor intends on proposing a chapter 11 plan to repay this debt over time from proceeds of operations.
16. The Debtor has borrowed funds from Delta Bridge Funding LLC and Headway Capital LLC, in the aggregate amount of approximately \$185,000. The Debtor believes that neither of these loans is secured.

OBJECTIVES OF THE CHAPTER 11 CASE

17. The Debtor has filed this bankruptcy proceeding to stay its creditors so that it can have some breathing room to reorganize in order to make lease payments to its landlord, pay sales and withholding taxes currently and pay its insurance. Ultimately the Debtor will propose a plan of reorganization whereunder it will repay as many of its debts as possible.

b. LR 1007-2(a)(2)

18. This case was not originally commenced under Chapter 7 or 13 of the Bankruptcy Code.

c. Committees Organized Prior to Filing. LR 1007-2(a)(3)

19. No formal or informal committees of creditors or other interest holders have been organized to date.

d. Holders of 20 Largest Unsecured Claims. LR 1007-(2)(a)(4)

20. The names and addresses of the twenty (20) largest unsecured creditors excluding (i) those creditors who or which would not be entitled to vote at a creditors' meeting under 11 USC Section 702; (ii) such creditors who were employees of the Debtor at the time of the filing of its petition for reorganization; and (iii) creditors who are insiders as that term is defined in 11 USC Section 101(31) are annexed hereto as **Exhibit "A"**.

e. Holders of the five largest Secured Claims. LR 1007-(2)(a)(5).

21. A list of the names and addresses of the five largest secured creditors is annexed hereto as **Exhibit "B"**.

f. Schedule of Assets and Liabilities. LR 1007-(2)(a)(6).

22. As required by Local Bankruptcy Rule 1007-2(a)(6), unaudited schedules of the Debtor's assets and liabilities are annexed hereto as **Exhibit "C"**

g. Publicly-Held Securities. LR 1007-(2)(a)(7).

23. No shares of stock, debentures, or other securities of the Debtor are publicly held.

h. Debtor's Premises. LR 1007-(2)(a)(9).

24. The Restaurant is located at 22 Elm Street, Rye, NY.

i. Location of Debtors' Assets and Books and Records. LR 1007-(2) (a)(10).

25. The Debtor's substantial assets and books and records are located at 22 Elm Street, Rye, NY. No assets are located outside the territorial limits of the United States.

j. Threatened or Pending Actions against Debtor. LR 1007-(2)(a)(11).

26. The following actions or proceedings are pending or threatened:

As of the date of this Declaration, there are no pending litigation known to Debtor.

k. Debtor's Senior Management. LR 1007-(2)(a)(12).

27. The Debtor's senior management is comprised of Alan Schoening, the President, and Christopher D. Myers, the acting CFO of the Debtor..

l. Additional Information if Business is to Continue. LR 1007-(2)(b)(1) and (2).

28. The Debtor's estimated amount of the payroll to employees (exclusive of officers, directors, stockholders and partners) for the thirty (30) day period following the filing of the chapter 11 petition is approximately \$96,000. The estimated amount of the monthly payroll payable to management or officers, stockholders, directors is approximately \$11,000 for the thirty-day (30) period after filing.

m. Estimated Schedule of cash receipts and disbursements for 30 days. LR 1007-(2) (b) (3).

29. The estimated schedule of cash receipts and disbursements for the thirty (30) day period following the filing of the Chapter 11 petition is annexed hereto as **Exhibit "D"**.

The Debtor filed a motion to utilize cash collateral which was authorized by the Court. The order to use cash collateral will enable the Debtor to preserve its business and assets while at the same time adequately protecting its creditors. Without any working capital expenses like insurance, wages, utilities and computer support, the Debtor cannot function. Debtor seeks an interim cash collateral order followed by a permanent cash collateral order at a later date.

**Dated: Harrison, NY
August 30, 2022**



Alan Schoening

EXHIBIT A

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS
(see attached)**

Fill in this information to identify the case:

Debtor name **22 Elm Rye Inc.**United States Bankruptcy Court for the: **SOUTHERN DISTRICT OF NEW YORK, WHITE PLAINS DIVISION**

Case number (if known): _____

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an insider, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
Advanced HVAC 8926 190th St Hollis, NY 11423-1927		Equipment Maintenance				\$10,137.00
Cintas Corporation 325 Corporate Blvd S Yonkers, NY 10701-6864		Vendor				\$3,989.00
Consolidated Edison Co. of NY, Inc. PO Box 1702 New York, NY 10116-1702		Utility				\$22,128.00
Delta Bridge Funding, as agent CloudFund LLC 18851 NE 29th Ave Ste 700 Aventura, FL 33180-2845		Loan	Disputed			\$137,000.00
EBF Holdings LLC d/b/a Everest Business 5 W 37th St New York, NY 10018-6222			Disputed			\$38,755.00
Ecolab PO Box 32027 New York, NY 10087		Lessor	Disputed			\$142,074.00
Elm Place Management, LLC PO Box 690 Rye, NY 10580-0690	John Lium, President	Lease Arrears				\$140,317.96

Debtor **22 Elm Rye Inc.**
Name

Case number (if known)

Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
GRA LLC 369 Lexington Ave New York, NY 10017-6506						\$97,200.00
Internal Revenue Service Centralized Insolvency Operations PO Box 7346 Philadelphia, PA 19101-7346		withholding Tax				\$40,000.00
Kristina Lee 39 Putters Way Middletown, NY 10940-2663		wages				\$2,600.00
Miguel Olmedo 131 Purchase St Apt 31B Rye, NY 10580-2139		wages				\$23,000.00
NYS Dept of Tax and Finance Bankruptcy/Special Procedures Sect. PO Box 5300 Albany, NY 12205-0300		Sales Tax	Disputed	\$221,435.42	\$0.00	\$221,435.42
Open Table 1 Montgomery St Ste 500 San Francisco, CA 94104-4535		Vendor				\$5,228.00
Paganos 142 Water St Norwalk, CT 06854-3140		Vendor				\$3,385.00
Queen Funding 101 Chase Ave Ste 208 Lakewood, NJ 08701-4762	sgoldman@queenfunding.com	Loan	Disputed			\$83,000.00
Rewards Network 540 W Madison St Ste 2400 Chicago, IL 60661-2562	Charles Sepulveda csepulveda@rewardsnetwork.com (800) 766-3463	Loan	Disputed			\$20,000.00
Riviera Produce PO Box 6065 Englewood, NJ 07631	(201) 227-7105	Vendor				\$4,704.00

Debtor 22 Elm Rye Inc. Case number (if known) _____
Name

Name of creditor and complete mailing address, including zip code	Name, telephone number and email address of creditor contact	Nature of claim (for example, trade debts, bank loans, professional services, and government	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
Seabreeze 541 9th Ave New York, NY 10018-1304		Vendor				\$6,253.00
Vincent's 2374 Arthur Ave Bronx, NY 10458-8107		Vendor				\$3,214.00
White Plains Linen 4 John Walsh Blvd Peekskill, NY 10566-5323		Vendor				\$2,628.00

EXHIBIT B

FIVE LARGEST SECURED CREDITORS

<u>Creditor</u>	<u>Amount</u>
FVP Servicing	\$1,000,000
NY State Department of Taxation and Finance	\$221,435.42
Micros/Shift 4 (POS System)	\$11,756

EXHIBIT C

Assets and Liabilities

Lease	\$ 1,000,000.00
Deposits and Cash	\$ 1,900.22
Office Equipment & POS	\$ 12,000.00
Security Deposit	\$ 50,000.00
Furnitue, Lighting, sound system	\$ 38,000.00
Plates, Glasses, Kitchen equip	\$ 105,000.00
Food and Liquor on hand	\$ 35,000.00
Accounts Receiveable	\$ 180,000.00
	\$ 1,421,900.22
Liabilities	
Secured Lender (contingent)	\$ 1,000,000.00
NY State DTF	221,435.42
Unsecured Debt	\$ 1,552,005.00
Rent	\$ 100,000.00
utilities	\$ 22,128.00
	\$ 2,895,568.42

EXHIBIT D

**SCHEDULE OF ANTICIPATED CASH RECEIPTS AND DISBURSEMENTS FOR THE
THIRTY DAY PERIOD FOLLOWING FILING OF THE CHAPTER 11 PETITION**

22 Elm Rye Inc							
Week			8/16--8/21	8/22-8/28	8/29-9/4	9/5-9/11	9/12-9/18
Revenue			\$ 37,000.00	\$ 39,000.00	\$ 40,000.00	\$ 43,000.00	\$ 44,000.00
Receivable			\$ 22,250.00				
Category Expenses							
Food			\$ 5,000.00	\$ 4,700.00	\$ 5,000.00	\$ 5,000.00	\$ 6,000.00
Liquor			\$ 2,200.00	\$ 1,000.00	\$ 3,300.00	\$ 3,400.00	\$ 3,400.00
Payroll Weekly/Tx/Tips			\$ 24,450.00	\$ 24,450.00	\$ 22,450.00	\$ 22,450.00	\$ 22,450.00
Payroll Services							
Sales Tax							
Mgr Salaries			\$ 2,750.00	\$ 2,750.00	\$ 2,750.00	\$ 2,750.00	\$ 2,750.00
Rent/Prop Tx			\$ 10,967.00			\$ 22,000.00	
Insurance&wkmns Comp			\$ 6,500.00				
ConEd							\$ 2,800.00
Water						\$ 200.00	
Waste Management					\$ 850.00		
Ice Machine/Dishwasher Lease							\$ 1,050.00
Advertising							\$ 800.00
GRA Services CFO			\$ 1,200.00		\$ 1,200.00		\$ 1,200.00
GRA Services GC			\$ 1,200.00		\$ 1,200.00		\$ 1,200.00
Accounting							
Cable						\$ 400.00	
Alarm					\$ 225.00		
Linen				\$ 300.00		\$ 600.00	\$ 300.00
Total Expenses			\$ 54,267.00	\$ 33,200.00	\$ 36,975.00	\$ 56,800.00	\$ 41,950.00
Net			\$ 4,983.00	\$ 5,800.00	\$ 3,025.00	\$ (13,800.00)	\$ 2,050.00
							\$ 2,058.00